



DEFENSE LOGISTICS AGENCY
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IN REPLY
REFER TO

DESC-CPA

OCT 07 2004

CONTRACTING INSTRUCTION (CI): 04-24
MEMORANDUM FOR CI DISTRIBUTION

SUBJECT: Memorandum from Director, Defense Procurement and Acquisition Policy
and New DEPI Coverage Regarding Fair Opportunity

This Contracting Instruction (CI) is twofold. First, it is to distribute the September 13, 2004 Memorandum from Ms. Diedre A. Lee, Subject: Approval Levels for Sole Source Orders Under Federal Supply Schedules (FSSs) and Multiple Award Contracts (MACs) (attached) effective October 1, 2004. Second, it is to provide additional local DEPI coverage at 6.304 (a)(102), 8.405.6, and 16.505 regarding approval levels for orders under FSSs and MACs.

In accordance with Ms. Lee's memorandum, approval levels were changed in FAR for sole source orders under FSSs and MACs. To be consistent with the new FAR requirements, such orders under the FSSs and MACs must be approved by individuals at the levels cited in FAR 6.304, and DEPI 6.304. Both DFARS and DLAD will be updated in the future, and supplemental CI coverage will be issued as necessary.

Effective immediately the approval authority to insure fair opportunity is designated as the DESC Competition Advocate between \$100,000 up to the \$10 million threshold in accordance with FAR 6.304(a)(1), which allows a higher approval level be established in agency procedures. New DEPI coverage is attached.

This CI is effective immediately and expires upon inclusion in the DEPI.

Point of contact if Ms. D. Baker, (703) 767-8459 or DSN 427-8459.

GABRIELLA M. EARHARDT
Center Senior Procurement Official

Attachments
Memorandum Sep. 13, 2004
DEPI coverage





ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

SEP 13 2004

DPAP/DARS

MEMORANDUM FOR SENIOR PROCUREMENT EXECUTIVES
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Approval Levels for Sole Source Orders Under Federal Supply
Schedules (FSSs) and Multiple Award Contracts (MACs)

On July 19, 2004, we changed Federal Acquisition Regulation (FAR) procedures for approving sole source orders under Federal Supply Schedules (FSS), establishing new approval levels and documentation requirements. The new approval levels were published in Federal Acquisition Circular 2001-24 and are consistent with the justification and approval (J&A) levels at FAR 6.304. These changes will better support our efforts to maximize competition when using FSS for supplies and services.

The new FAR approval levels are higher than DFARS requirements, which currently authorize the contracting officer, without further approval, to waive competition requirements when ordering services greater than \$100,000 under FSS (see DFARS 208.404-70). To be consistent with the FAR, such orders under the FSS must be approved by individuals at the levels cited in FAR 6.304.

These procedures apply whether an order is placed against the FSS by DoD or by a non-DoD agency on behalf of DoD. When a non-DoD agency is the ordering activity, the DoD requiring agency will provide the supporting rationale for a waiver to the contracting officer at the ordering activity, who must comply with the requirements in FAR 8.405-6.

I am also extending these same approval levels to determinations to waive competition for orders for supplies or services under Multiple Award Contracts (MACs).

Any determination waiving competition must solidly support the action taken. A recent GAO report entitled, "CONTRACT MANAGEMENT: Guidance Needed to Promote Competition for Defense Task Orders," cited some examples of DoD's lack of adequate support particularly when using the "logical follow-on" basis for waiving competition under MACs at FAR 16.505(b)(2)(iii). Contracting

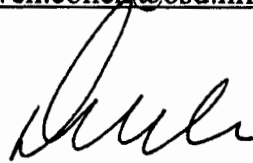


officers must ensure requirements offices provide adequate information to support determinations to waive competition, to include the results of market research and data to support why further competition is not in the Government's best interest. The J&A content requirements at FAR 6.303-2 outline what contracting officers and requirements activities must consider. The ordering activity contracting officer is responsible for adequately documenting the decision in the contract files.

These changes are necessary to ensure the Department places appropriate emphasis on promoting competition on orders against MACs and FSSs and to ensure that DoD can continue to use these flexible vehicles to meet future requirements. The effective date of these changes is October 1, 2004.

This memorandum will remain in effect until DFARS and corresponding DFARS Procedures, Guidance and Information (PGI) coverage have been revised.

Please contact Steven Cohen at steven.cohen@osd.mil or 703-602-0293 should you have questions.

A handwritten signature in black ink, appearing to read 'Deidre A. Lee', is positioned above the printed name and title.

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

6.304 APPROVAL OF THE JUSTIFICATION

(a) When a justification for other than full and open competition is required it shall be approved in writing –

For a sole source FSS or MAC order < \$100,000	The contracting officer's certification will serve as approval as required by FAR 6.303-2(a)(12).*
For a sole source FSS or MAC order > \$100,000 but not exceeding \$10,000,000	The DESC competition advocate will serve as approval authority in accordance with DEPI 16.505(b)(4)(101)
For a proposed contract < \$500,000	The contracting officer's certification will serve as approval as required by FAR 6.303-2(a)(12). *
For a proposed contract > \$500,000 but not exceeding \$10,000,000	Approval will be made by the competition advocate (DESC-CP) as required by FAR 6.304(a)(2) (Note: see Utility Privatization exception at 6.304(a)(101) below.)
For a proposed contract > \$10,000,000 but not exceeding \$50,000,000	Approval will be made by the Director, DESC-D as required by DLAD 6.304(a)(4)(A)(1)(ii), with prior concurrence by the DESC CSPO
For a proposed contract > \$50,000,000	Approval will be made by the Senior Procurement Executive J-33 with a letter of transmittal signed by the Director, DESC-D as required by DLAD 6.304(a)(4)(A)(1). Approval will be as required per DLAD 6.303-2(a)(90)

(101) Utility Privatization - In accordance with 10 U.S.C. 2688(b)(1), a utility privatization procurement may proceed on a sole source basis if good faith efforts to obtain competition are unsuccessful. The file should be so documented with a Determination and Findings. Approval by the Competition Advocate is not required in these instances.

(102) * For approval levels of awards made under FAR Part 8, Federal Supply Schedules (FSSs), and FAR 16.505, Multiple Award Contracts (MACs) see applicable DEPI Part 8 coverage.

8.405-6 Sole Source Justification and Approval.

(b)(1)(101) The approval authority is designated as the DESC Competition Advocate for sole source orders at or greater than \$100,000, after appropriate concurrences within the CBU.

(b)(2)(101) The approval authority is designated as the DESC Competition Advocate for sole source orders at or greater than \$100,000, after appropriate concurrences within the CBU.

16.505 Ordering

(b) Orders for Services under the multiple award contracts.

(4)(101) The DESC Competition Advocate must approve the contracting officer's written determination for using an exception to the fair opportunity process for sole source FSS or MAC orders at or greater than \$100,000.